In the Supreme Court of the United States.

OCTOBER TERM, 1899.

HARRY PLUMMER, as Executor, &c., of JOSEPH PLUMMER, deceased,
Plaintiff in Error,

AGAINST

BIRD S. COLER, Comptroller of the City of New York,
Defendant in Error.

No. 489.

BRIEF FOR DEFENDANT IN ERROR.

The sole question presented is whether United States Bonds can be appraised to ascertain the value of a succession under the Taxable Transfer Law of New York in order to fix the tax on the succession.

STATEMENT.

Joseph Plummer, a resident of New York, died October 24, 1898. By his will he gave a legacy of $40,000 to his daughter, Ella Plummer Brown, for life, with a gift over on her death. The value of this life estate has been computed and a tax amounting to $161.20 was imposed on this succession by the Surrogate. The entire estate consisted of United States Bonds issued under the Funding Act of 1870. This Act provided that the bonds and the interest thereon shall be exempt "from

taxation in any form by or under State, Municipal or local authority, and the said bonds shall have set forth and expressed upon their face the above specified condition." The bonds, in accordance with this provision contained a clause to the effect that the principal and interest are exempt from taxation in any form by or under State, Municipal or local authority. (Record, p. 12.)

The Surrogate held that as the tax was not upon the bonds, but upon the value of the succession, viz., the right given by the State to the decedent to dispose of his property by will or to the legatee to receive it—the bonds were not taxed, but were appraised simply to determine the value of this right of succession. (Opinion, Record, pp. 13 and 14.) This determination having been affirmed by the Court of Appeals, the case is brought by the executor of Joseph Plummer to this Court, who assigns as error: (1) that the State of New York has no power to impose any tax upon said bonds or any interest thereon or upon the transfer thereof by the will of Joseph Plummer. (2) That the tax law "*in imposing a tax upon said bonds*" is repugnant to the Constitution and laws of the United States of America on the ground that they impair the power of the United States to borrow money (3) That the tax law *in imposing a tax on said bonds* impaired the obligation of the contract contained in said bonds, which exempts the principal and interest thereof from taxation in any form by the State; and (4) that the tax law *in imposing the tax on said bonds* violated the Funding Act of 1870, by which said bonds were exempted from taxation in any form by said State.

It will be contended by the State in reply that none of the assignments of error are well taken, because no tax has been imposed upon the bonds themselves, but the tax has been imposed upon the value of the privilege conferred by the State upon Miss Plummer of succeeding to the property, and that only this privilege of succession has been taxed, the bonds having been valued simply to determine the value of this privilege.

POINTS.

I.

THE TAX IMPOSED BY THE TAXABLE TRANSFER LAW IS NOT UPON THE PROPERTY ITSELF, BUT UPON THE VALUE OF THE PRIVILEGE OF SUCCESSION. THE SUCCESSION TO PROPERTY BY WILL IS REGULATED BY LOCAL LAW, AND IN GRANTING THAT PRIVILEGE THE STATE HAS THE RIGHT TO IMPOSE AS A CONDITION THE PAYMENT OF A TAX OR BONUS TO ITSELF.

(*a.*) The Act itself imposes a tax "upon the transfer of any property," when the transfer is by will * * * from a resident of the State (§220 and subd. 1).

By Section 220 the appraiser is to fix the "fair market value" of the property transferred, and Section 221 (in case of children) provides, that such transfer of property shall be taxable at the rate of 1% upon the clear market value of such property." These provisions, as well as all the provisions of the Act, show that the tax is not on the bonds, but on the privilege of succession conferred by the State upon the legatee of taking by the will, the bonds being appraised simply to ascertain the value of this privilege thus granted by the State, so that the amount of the tax can be fixed.

Plaintiff in error contends that, because the tax is made a lien on the property (§222), and because the executors may sell property to pay the tax and cannot be compelled to transfer a specific legacy until he collects from the legatee the tax (§224), the whole theory of the Act is changed from a tax upon the value of the privilege of succession to a specific tax upon property. This is not so. They are simply provisions or methods to secure to the State the payment of the tax, and do not change its character from a tax or excise upon the value of the privilege of succession to a specific tax upon the property.

In *Scholey* v. *Rew*, 23 Wall., 331, the same claim was made, that, because the War Revenue Act of 1864 provided that the tax imposed should be a lien upon the real estate, therefore the tax must be upon the property, and not upon the succession

to the property. In overruling this objection and in holding that the tax was upon the succession, Mr. Justice Clifford says, at page 247:

> "Nor is this question affected in the least by the fact that the tax or duty is made a lien upon the land, as the lien is simply an appropriate regulation to secure the collection of the exaction."

All of these provisions were in the Illinois Statute. Thus in that Act, §4 provided that the executor shall deduct the tax from the legacy, or if a specific legacy, collect it from the legatee, and he could not be compelled to deliver a legacy till the legatee paid the tax; §5 provided that the executor could sell for payment of taxes, and §22 made the tax a lien till paid. Nevertheless, this Court in Magoun *v.* Illinois State and Savings Bank, 170 U. S., 283, held the Illinois Inheritance Tax Law, which is identical with the one in question, did not impose a tax on property, but on the privilege of succession. The present Transfer Law of New York is but a codification of the prior Inheritance Laws, and these provisions relied on are not new. This §222 was §3 of the Act of 1892, and §224 was §6 and §7 of the Act of 1887, ch. 713, and §5 of the Act of 1892. The latter provision was in the Act of New York before this Court in *United States* v. *Perkins,* 163 U. S., 625, affirming 141 N. Y., 479, where it was distinctly held that the tax was not upon property, but upon the privilege conferred by the State to succeed to it.

In the *Matter of Hoffman,* 143 N. Y., 327, in speaking of the Transfer Act in the form it is quoted in appellant's brief, Judge Finch says, at page 331:

> "There are some changes of phraseology in the more important sections, but I think it remains true that the tax is one upon the right of succession, levied upon the successors in respect to the shares to which they succeeded, and not upon decedent's estate as such."

(*b.*) It is not an open question:

(1.) That an Inheritance Tax is not one on property, but one on the privilege of succession.

(2.) That the right to take property by devise or descent is the creature of the law of the State and not a natural right—a privilege—and therefore the authority which confers it may impose conditions upon it.

Such is the law of this Court.

United States v. *Perkins*, 163 U. S., 625, affirming 141 N. Y., 479.
Magoun v. *Ill. Trust & Savings Bank*, 170 U. S., 283.

The Courts of New York have uniformly construed its Transfer Law as not imposing a tax on property, but on the value of the privilege of succession created by the State.

Matter of Sherman, 153 N. Y., 5.
Matter of Merriam, 141 N. Y., 479.
Matter of Hoffman, 143 N. Y., 329.
Matter of Bronson, 150 N. Y., at pp. 6 and 16.
Matter of Swift, 137 N. Y., 77.
Matter of Davis, 149 N. Y., 546.

"The construction by the Courts of a State of its constitution and statutes is, as a general rule, binding on the Federal Courts. We may think that the Supreme Court of a State has misconstrued its constitution or its statutes, but we are not at liberty to therefore set aside its judgment. That Court is the final arbiter as to such questions."

Justice Brewer in *Forsyth* v. *Hammond*, 166 U. S., at p. 518, and cases cited at p. 519.

In *Leffingwell* v. *Warren*, 2 Black, 599, 603, Justice Swayne says at p. 603, "the construction given to a statute of a State by the highest judicial tribunal of such State is regarded as a part of the statute and is as binding upon the Courts of the United States as the text."

The same construction has uniformly been given by other States to similar Inheritance Law.

In re. Wilmerding, 117 Cal,. 281.
State v. *Alston*, 94 Tenn., 674.
State v. *Hamlin*, 86 Me., 495.
State v. *Dalrymple*, 70 Md., 294.

Eyre v. *Jacob,* 14 Grat., 442.
Minot v. *Winthrop,* 162 Mass., 113.
Drake v. *Kochersferger,* 167 Ill., 125.

The theory of Transfer Taxes has been so recently examined by this Court and all the cases so thoroughly examined, that it is not deemed necessary to cite from any of the cases except those decided in this Court.

In *United States* v. *Perkins,* 163 U. S., 625, it was held that it was within the power of the State of New York to tax a bequest to the United States, Judge Brown saying at page 627:

> "While the laws of all civilized states recognize in every citizen the absolute right to his own earnings and to the enjoyment of his own property, and to the increase thereof during his life except so far as the state may require him to contribute his share for public expenses, the right to dispose of his property by will has always been considered purely a creature of statute and within legislative control."

Judge Brown then shows that by the laws of various countries from early days testamentary dispositions were regulated by the Statute Laws, and continues at page 628:

> "Though the general consent of the most enlightened nations has, from the earliest historical period, recognized a natural right in children to inherit the property of their parents, we know of no legal principle to prevent the legislature from taking away or limiting the right of testamentary disposition or imposing such conditions upon its exercise as it may deem conducive to public good."
>
> "In this view the so-called inheritance tax of the State of New York is in reality a limitation upon the power of a testator to bequeath his property to whom he pleases, a declaration that in the exercise of that power he shall contribute a certain percentage to the public use; in other words, that the right to dispose of his property by will shall remain but subject to a condition that the state

has a right to impose. Certainly if it be true that the right of testamentary disposition is purely statutory, the state has a right to require a contribution to the public treasury before the bequest shall take effect. Thus the tax is not upon the property in the ordinary sense of the term, but upon the right to dispose of it and it is not until it has yielded its contribution to the state that it becomes the property of the legatee. * * * This, therefore, is not a tax upon the property itself, but is merely accorded in permitting property so situated to be transferred by will or by descent or by distribution."

After quoting extracts from the opinions of many state cases establishing the same propositions, Judge Brown says, after referring to Strode *v.* Commonwealth, 52 Pa. St., 181, at page 629:

"In this last case, as well as in Wallace *v.* Meyers, 38 Fed. Rep., 184, it was held that, although the property of the decedent included United States bonds, the tax might be assessed upon the basis of their value, because the tax was not imposed upon the bonds themselves, but upon the *estate* of the decedent, or the privilege of acquiring property by inheritance. Eyre *v.* Jacob, 14 Grattan, 422; Dos Passos on Inheritance Tax Law, chap. 2, sec. 8, and cases cited. Such a tax was also held by this court to be free from any constitutional objection in Mager *v.* Grima, 8 How., 490, 493, Mr. Chief Justice Taney remarking that 'the law in question is nothing more than an exercise of the power which every state and sovereignty possesses, of regulating the manner and terms within which property, real and personal, within its dominion may be transferred by last will and testament, or by inheritance; and of prescribing who shall and who shall not be capable of taking it. * * * If a State may deny the privilege altogether, it follows that when it grants it, it may annex to the grant any conditions which it supposes to be required by its interests or policy.' To the same effect is United States *v.* Fox, 94 U. S., 315.

"We think that it follows from this that the act in question is not open to the objection that it is an attempt to tax the property of the United States."

In *Magoun* v. *Illinois Trust and Savings Bank, supra,* the Supreme Court, in the discussion of a similar question as to the meaning and operation of the Illinois inheritance law, said, speaking by Mr. Justice McKenna, after stating the history of such laws in various States and countries, at p. 288:

> "The constitutionality of the taxes have been declared and the principles upon which they are based explained in United States *v.* Perkins, 163 U. S., 625, 628; Strode *v.* Commonwealth, 52 Penn. St., 181; Eyre *v.* Jacob, 14 Grat., 422; Schoolfield *v.* Lynchburg, 78 Virginia, 366; State *v.* Dalrymple, 70 Maryland, 294; Clapp *v.* Mason, 94 U. S., 589; *in re* Merriam's Estate, 141 N. Y., 479; State *v.* Hamlin, 86 Maine, 495; State *v.* Alston, 94 Tennessee, 674; *in re* Wilmerding, 117 California, 281; Dos Passos Collateral Inheritance Tax, 20; Minot *v.* Winthrop, 162 Mass., 113; Gelsthrope *v.* Furnell (Montana), 51 Pac. Rep., 267. See also Scholey *v.* Rew, 23 Wall., 331.
>
> "It is not necessary to review these cases or state at length the reasoning by which they are supported. They are based on two principles: 1. *An inheritance tax is not one on property, but one on successions.* 2. The right to take property by devise or descent is the creature of the law, and not a natural right—a privilege—and, therefore, the authority which confers it may impose conditions upon it.
>
> "From these principles it is deduced that the states may tax the privilege, discriminate between relatives and between these and strangers, and grant exemptions; and are not precluded from this power by the provisions of the respective state constitutions requiring uniformity and equality of taxation."
>
> "The second principle was given prominence in the arguments at bar. The appellee claimed that the power of the State could be exerted to the extent of making the State the heir to everybody, and the appellant asserted a natural right of children to inherit. Of the former proposition we are not required to express an opinion. Nor indeed of the latter for appellant conceded that the testamentary disposition and inheritance were subject to regulation. However, as pertinent to the subject, decisions of this Court may be cited."

In United States *v.* Fox, 94 U. S., 320, a law of the State of New York confining devises to natural persons and corporations created under its laws was considered, and a devise of land to the United States was held void. The Court said:

"The power of the State to regulate the tenure of real property within her limits, and the modes of its acquisition and transfer, and the rules of its descent, and the extent to which a testamentary disposition of it may be exercised by its owners, is undoubted. It is an established principle of law, everywhere recognized, arising from the necessity of the case, that the disposition of immovable property, whether by deed, descent or any other mode, is exclusively subject to the government within whose jurisdiction the property is situated. McCormick *v.* Sullivant, 10 Wheat., 202. Statutes of Wills, as is justly observed by the Court of Appeals, are enabling acts, and prior to the statute of 32 Henri VIII there was no general power at common law to devise lands. The power was opposed to the feudal policy of holding lands inalienable without the consent of the lord. The English Statute of Wills became a part of the law of New York upon the adoption of her constitution in 1777; and, with some modification in its language, remains so at this day. Every person must, therefore, devise his lands in that State within the limitations of the statute or he cannot devise them at all. His power is bounded by its conditions.

"In Mager *v.* Grima, 8 How., 490, 493, there was considered the validity of a law of Louisana imposing a tax of ten per cent. upon legacies, when the legatee was neither a citizen of the United States nor domiciled therein. Mr. Chief Justice Taney considered the legal question of easy solution, and disposed of it summarily. He said: 'This is a plain case, and when the facts are stated the questions of law may be disposed of in a few words.' After stating the case briefly, he further said: 'Now, the law in question is nothing more than an exercise of the power which every State and sovereignty possesses, of regulating the manner and term upon which property, real or personal, within its dominion may be transmitted by last will and testament, or by inheritance; and of prescribing who shall and who shall

not be capable of taking it. Every State or nation may unquestionably refuse to allow an alien to take either real or personal property situated within its limits, either as heir or legatee, and may, if it thinks proper, direct that property so descending or bequeathed shall belong to the State. In many of the States of this Union at this day real property devised to an alien is liable to escheat. And if a State may deny the privilege altogether, it follows that, when it grants it, it may annex to the grant any conditions which it supposes to be required by its interests or policy. This has been done by Louisiana. The right to take has been given to the alien, subject to a deduction of ten per cent. for the use of the State.

"In some of the States laws have been passed at different times imposing a tax similar to the one now in question upon its own citizens as well as foreigners, and the constitutionality of these laws has never been questioned. And if a State may impose it upon its own citizens, it will hardly be contended that aliens are entitled to exemption; and that their property in our own country is not liable to the same burdens that may lawfully be imposed upon that of our own citizens.

"We can see no objection to such a tax, whether imposed on citizens and aliens alike, or upon the latter exclusively."

The learned Justice then quotes extensively what was said by Mr. Justice Brown in United States *v.* Perkins, including the following:

"That while the laws of all civilized States recognize in every citizen the absolute right to his own earnings and to the enjoyment of his own property, and to the increase thereof during his life, except so far as the State may require him to contribute his share for public expenses, the right to dispose of his property by will has always been considered purely a creature of statute, and within legislative control."

The Court then quotes from the case of Curry *v.* Spencer, 61 N. H., 624, as follows:

"Wills, therefore, testaments, the rights of inherit-

> ance and succession, are all of them creatures of the civil or municipal law, and accordingly are in all respects regulated by them."

These two cases show that the Supreme Court considered the right of inheritance and the right to take by will, not as a common right—a natural right—guaranteed by the Constitution, but as a privilege within the power of the state legislature to grant or withhold. As the Supreme Court has said, through Chief Justice Marshall, in many cases: "The sovereignty of the state extends to everything which exists by its own authority or is introduced by its permission." The power to determine upon what conditions property should be allowed to pass by will has never been granted by the States to the Federal Government, and is one of the powers retained by the State under the provisions of the United States Constitution. Being a privilege granted by the State, it follows that it cannot be retarded, burdened or controlled in any way by the general government, as it would be if it is held that the State cannot regulate the transmission by will of United States Bonds. The State can regulate the transmission of all kinds of property, and it has treated all kinds alike by the Act in question. The United States Bonds are not discriminated against, as one might think from appellant's brief, but, like all other property, their value serves to measure the impost.

Whether the State has the absolute right to escheat all of a person's property on his death, or whether a family has an inherent right to inherit, are not material. These propositions were argued most extensively in *Magoun* v. *Ill. Trust & Savings Bank*, 170 U. S., 283, and how the Court will decide the question when a State has attempted to exercise the power, is not material to the question before the Court, for it must be conceded that a State has the power to regulate testamentary dispositions of property, and that is all the State of New York has attempted to do. Such power of regulation has always been exercised by the States, and in every State and Country will be found Statutes regulating such testamentary dispositions, which have never been, and cannot be, challenged as beyond the constitutional powers of the State.

That the right of a person to take by inheritance or by will is a favor conferred by a State and is subject to its power of regulation, is conceded in the following additional cases.

Mager v. *Grima,* 8 How., 490.
Carpenter v. *Commonwealth,* 17 How., 456.
Scholey v. *Rew,* 23 Wall., 331.
United States v. *Fox,* 94 U. S., 315.
Cooley's Const. Limitations (5th Ed.), p. 440.
Norman v. *Heist,* 5 W. & S. 171.
2 Blackstone Com., 211.
Lavery v. *Eagan,* 143 Mass., 392.
Bretton v. *Fox,* 100 Mass., 234.
Gilles v. *Weller,* 10 Ohio, 464.
Sturgis v. *Ewing,* 18 Ill., 176.
Edwards v. *Pope,* 3 Scam. R., 465.

Having the power to regulate the testamentary disposition of property, the State of New York, in conferring the privilege of taking upon the legatee, has under all the authorities, the right to exact for the privilege thus conferred, the payment of a bonus or tax upon the value of the privilege thus conferred. This is in no sense a tax upon the property, but is a bonus paid by the person allowed to take, for the privilege of taking.

The argument to which pages of appellant's brief is devoted that there is a common law right of testamentary disposition and of taking by will, and that it is protected by the 14th Amendment to the Constitution is not before the Court, for nowhere in the record is there a suggestion that the Act in dispute violates that amendment, and it cannot be raised in this Court for the first time. If there was a common law right as claimed, appellants admit it is subject to repeal or regulation and the courts of New York have decided that the act in question is nothing but a limitation of this testamentary power of disposition, and as this decision involves only a consideration of the statutes and Constitution of New York, it would seem to be final in this Court. Even the extracts in appellants' brief show that there was no inherent or natural right of testamentary disposition, because they show that at the adoption of our First Constitution the power to dispose by will existed not by virtue

of the unwritten law but by the early statutes of England which granted that right, and all countries had always regulated it. The common law right rested therefore not upon any natural right in the individual but upon these early statutes granting and regulating the privileges. The present statute simply regulates and limits the privilege as decided by the courts of New York and whether in any way this violates the 14th Amendment is not before the Court.

II.

THE TAX NOT BEING UPON THE UNITED STATES BONDS, BUT UPON THE PRIVILEGE OF SUCCESSION GRANTED BY THE STATE, NEITHER THE PROVISION OF THE FUNDING ACT OF 1870 NOR OF THE BONDS THAT "THE PRINCIPAL AND INTEREST ARE EXEMPT FROM TAXATION IN ANY FORM BY OR UNDER STATE, MUNICIPAL OR LOCAL AUTHORITY," HAVE BEEN VIOLATED. THE BONDS ARE NOT TAXED AT ALL; THE PRIVILEGE TO SUCCEED TO THEM IS TAXED, AND THE VALUE OF THAT PRIVILEGE IS ASCERTAINED BY APPRAISING THE BONDS, JUST AS THE UNITED STATES BONDS ARE INCLUDED AND A TAX PAID UPON THEIR VALUE IN DETERMINING THE VALUE OF A FRANCHISE.

(*a.*) The value of United States Government Bonds can be included in determining the value of the privilege of succession in order to fix the tax upon that succession, under the provisions of the Taxable Transfer Act, since the amendment of that act by Chapter 88 of the Laws of 1898, because there is no tax upon the Bonds.

Chapter 88 of the Laws of 1898 took effect March 21, 1898, and as Mr. Plummer died October 24, 1898, this question must be decided under the provisions of this amendment. Before the Amendment of 1898 the word *property* as used in the Transfer

Act of 1892 was defined "as property over which this State has any jurisdiction for the purpose of taxation." This definition first appeared in the act in 1892. In the *Matter of Whiting* (150 N. Y., 27), and the *Matter of Sherman* (153 N. Y., 1), the Court of Appeals had held that, although the value of Government Bonds could be properly appraised in determining the value of a succession, the words above quoted expressly exempted such bonds from valuation. Thereupon, to meet the objection raised in those cases the Legislature, by Chapter 88 of the Laws of 1898, amended the definition of the word *property by omitting the words above quoted,* and thus restored the law to its condition prior to 1892, and makes applicable to the decision of this case the entire line of reasoning adopted by Judge Andrews in the *Matter of Sherman,* 153 New York, 1, at pages 3, 4 and 5, where he held that with the Act in the form it was prior to 1892, the United States Bonds could be properly valued in fixing the tax.

(*b.*) Every case that can be found, where this question is raised, has decided that United States Bonds can be appraised to determine the value of the privilege of succession, in order to fix the tax or bonus to be paid the State for the privilege it confers.

Strode v. *Commonwealth,* 52 Pa. St., 181.
Clymer v. *Commonwealth,* 52 Pa. St., 185.
Wallace v. *Meyers,* 38 Fed. Rep., 184.
Matter of Sherman, 153 N. Y., 1.
Matter of Whiting, 150 N. Y., at p. 31.
Matter of Whiting, 2 App. Div. (N. Y.), 590.
Estate of Carver, 4 Misc. (N. Y.), 592.
Matter of Howard, 5 Dem. (N. Y.), 483.
Re Tugg's Estate, 15 N. Y. Supp., 548.
United States v. *Perkins,* 163 U. S., at p. 629.
See opinions in Appendix to Brief.

The theory upon which these cases were decided is the same as that upon which Transfer Laws have always been sustained, as shown in the previous point, viz., that the right of testamentary disposition of all kinds of property within a state, is

subject to the State's control; that as the State confers and regulates the privilege it has the power to say upon what terms it will allow any and all kinds of property within its borders to pass by will, and the terms upon which it will allow a legatee to take; that the tax or bonus thus imposed is upon the value of the privilege of succession thus created and regulated by the State, and not on the property. As this Court says in *Magoun* v. *Ill. Trust & Savings Bank* (*supra*); "The tax is not on money; *it is on the right to inherit;* and hence a condition of inheritance, and it may be graded according to the *value of that inheritance.*"

Appellant admits the power of the State to regulate testamentary dispositions, and the regulations in this case is plainly within the power of the State to impose.

Upon the theories above expressed, United States Bonds have universally been valued in ascertaining the value of succession under Transfer Laws like the one in question. It has been expressly so held in the following cases:

Matter of Sherman, 153 N. Y., 1,

See opinion of Judge Andrews concurred in by the entire Court at pp. 3 to 5 for a full statement of the reasons why this right exists.

Strode v. *Commonwealth,* 52 Pa. St., 183;
Wallace v. *Meyers,* 38 Fed. Rep., 184,

where there are able opinions on the subject.

These cases are quoted with approval that the value of Government Bonds can be included in fixing the tax in *United States* v. *Perkins,* 163 U. S., at p. 629, the Court saying:

> " It was held that, although the property of the decedent included United States bonds, the tax might be assessed upon the basis of their value, because the tax was not imposed upon the bonds themselves, but upon the *estate* of the decedent or the privilege of acquiring property by inheritance."
>
> *Estate of Carver,* 4 Misc. (N. Y.), 592 (Opinion by Surrogate Davie) affirmed on this opinion, 75 Hun, 612.

Matter of Howard, 5 Dem. (N. Y.), 483, where there is an able opinion by Surrogate Rollins.

Re Tuigg's Estate, 15 N. Y. Supp., 548, opinion by Surrogate Ransom.

Moreover, in the *Matter of Whiting,* 2 App. Div., 590, a majority of the New York Supreme Court (1st Dept.) held that the value of Government Bonds could be included, even under the Act of 1892 before it was amended. This decision was modified by the Court of Appeals entirely upon the ground of the definition of the word "property," which was defined in the Act as "*property over which this State has any jurisdiction for the purpose of taxation.*" In his opinion Judge Vann states, as the opinion of the majority of the Court, 150 N. Y., at p. 31: "That although the State may have the power to impose a succession tax upon United States Bonds, it has not yet done so; that the phrase 'property * * * over which the State has any jurisdiction for the purpose of taxation' refers to the jurisdiction actually exercised through contemporary statutes, rather than to the entire jurisdiction actually possessed by the State."

In the *Matter of Sherman,* 153 N. Y., 1, the Court of Appeals after *holding that United States Bonds could properly be valued to ascertain the amount of a transfer tax,* held that they were properly excluded under the Act of 1892, owing to the *definition of "property"* as above quoted by the Court, saying: "But we are of opinion that United States Bonds were properly excluded from the valuation of the decedent's estate by the Surrogate by force of §22 of the Act of 1892."

These cases are now authorities in favor of including the value of the bonds, because by Chapter 88 of the Laws of 1898 the words in the definition of property "over which this State has any jurisdiction for the purpose of taxation" are omitted, and the law is thus restored to the condition it was in prior to 1892. The object of this amendment was to take out of the law the words which the Court had held expressly exempted United States Bonds, and to restore the Act to the condition in which it was, when Judge Andrews said in *Matter of Sherman,* 153 N. Y., at page 5:

"There was no limitation of this language in the sub-

sequent sections of the act and it *was held, as we think properly, that United States bonds were to be valued in fixing the tax.*"

The words "in any form," used in the exemption of the bonds from State taxation were used because, as appellant states in his brief, the form used as to Federal taxation could not be used as the States vary so in their methods of imposing taxes on property. They were used to cover all kinds of direct taxes of the bonds, but not to exempt from taxes imposed upon privileges, where the bonds are not taxed but appraised. If they were used for this latter purpose, then necessarily the decisions of this Court in the Franchise Cases and Bank Stock Cases must be wrong. Certainly it cannot be assumed that they were used to exempt the bonds from the provisions of the Laws of State regulating the testamentary power of disposition, as that is a matter not subject to the Federal control.

The great research of plaintiff's counsel has not been able to find a single case where Government bonds have not been appraised in fixing the tax upon the value of the privilege of succession, and for the Court to now hold that Inheritance Law imposes a tax upon the bonds themselves, as claimed in the assignments of errors, requires the Court to overrule the theory upon which not only this Court, but every other Court, has sustained the validity of Inheritance Laws. If this act imposes a tax on the bonds, then *United States* v. *Perkins,* 163 U. S., 625, was improperly decided. The question in that case, as stated by Judge Brown, was " whether it is within the power of the State to tax bequests to the United States." If the tax was upon property, then the bequest could not be taxed, for it is elementary that no State has the power to tax the property of the United States any more than it has the power to tax United States Bonds, but the Court held that the tax could be imposed, because the property of the United States was not taxed, but only the privilege granted by the State to the United States of succession to it. Therefore, this case is a direct authority that no tax is imposed on the bonds in the present proceedings, any more than it was on the property involved in that case. In both cases the State has granted a

privilege of succeeding to the property on condition that a tax or bonus on the value of the privilege granted be paid to it, and in no sense is this a tax on the property itself, which, under all the authorities, is simply appraised and not taxed.

The bonds not being taxed, the assignment of errors that the Funding Act of 1870 and the obligations of the contract of exemption contained in the bonds have been violated, and that the power of the United States to borrow money has been impaired (Record, pp. 21 and 22, Assignment of Errors Second, Third and Fourth) are not well taken. Each of these assignments alleges that the violation consists "in imposing a tax upon said bonds." No tax has been imposed on the bonds.

The first assignment of error is general and points out no provisions of the United States Constitution or of a Federal statute which is claimed to be violated and raises no Federal question.

III.

IN ASSESSING TAXES UPON THE VALUE OF FRANCHISES OR PRIVILEGES GRANTED BY THE STATE, OR UPON THE VALUE OF STOCK OF INDIVIDUALS, IT IS IMMATERIAL WHETHER THE PROPERTY WHICH GIVES VALUE TO THESE PRIVILEGES, FRANCHISES, OR THE STOCK ARE NON-TAXABLE. THE VALUE OF UNITED STATES BONDS IS ALWAYS INCLUDED AND IT IS NOT CLAIMED THAT BY SO DOING THERE IS ANY INTERFERENCE WITH THE BORROWING POWER OF CONGRESS.

(*a.*) Thus, the amount of capital of a foreign corporation, invested in imported articles in their original packages, can be included in assessing the tax upon a foreign corporation doing business in the State of New York, where the tax is based upon the amount of capital stock employed in this State, although the Supreme Court has repeatedly held that no State

can impose a tax, directly or indirectly, upon imported articles in their original packages.

United States v. *Roberts,* 171 U. S., 658, affirming 149 N. Y., 608, and 91 Hun, 158.

In answering the suggestion that by including the value of the capital invested in these imported articles, the Constitution of the United States and the power of Congress to impose taxes on imports and regulate commerce had been evaded, Mr. Justice Shiras, writing the opinion of the Court, says at page 64:

> "Again, it is said that, even assuming that the importation of crude drugs and their sale in the original packages constituted a portion of the corporate business, no tax could be imposed by the State under the doctrine of Brown v. Maryland, 12 Wheat., 419.
>
> "But that case is inapplicable. Here no tax is sought to be imposed directly on imported articles or on their sale. This is a tax imposed on the business of a corporation, consisting in the storage and distribution of various kinds of goods, some products of their own manufacture and some imported articles. *From the very nature of the tax, being laid as a tax upon the franchise of doing business as a corporation, it cannot be affected in any way by the character of the property in which its capital stock is invested.*
>
> Society for Savings *v.* Coite, 6 Wall., 594.
> Provident Institution *v.* Massachusetts, 6 Wall., 611.
> Pembina Mining Co. *v.* Pennsylvania, 125 U. S., 181.
> Home Insurance Co. *v.* New York, 134 U. S., 594."

(*b.*) The privilege of succession granted by the State is more like the grant of a franchise to a corporation than anything else. In both cases the State grants a privilege—in one case to succeed to property, and in the other to be a corporation. Both privileges are valuable personal property.

The plaintiff attempts to distinguish a large number of cases where United States Bonds have been appraised in de-

termining the value of franchises or privileges conferred by the State, but the principle is exactly the same in those cases as underlies the decision in this. In both cases the State grants or regulates the privilege—in the one, it grants or regulates the privilege of succession to property, in the other it grants or regulates the terms upon which a corporation can do business, and in both cases imposes a tax based upon the value of privilege thus granted.

The Supreme Court of the United States has repeatedly upheld taxes imposed on the value of the franchises of corporations, or upon the value of privileges granted, when it has been necessary to include the value of United States Bonds in determining the amount of the tax. In answer to the objection that it was a tax upon Government Bonds, it has been held that the tax is not upon the bonds, but upon the privileges or franchises, and the bonds are only valued in order to determine the amount of the tax.

The principle of these cases cannot be distinguished from that of the case at bar.

Monroe Savings Bank v. *City of Rochester,* 37 N. Y., 365, cited with approval 134 U. S., at p. 401.
People v. *Home Ins. Co.,* 92 N. Y., 328; affirmed 134 U. S., 598.
Society v. *Code,* 6 Wall., 594.
Institution v. *Massachusetts,* 6 Wall., 631.

In *The Home Insurance Co.* v. *New York* (*supra*) the State of New York had imposed a tax on the corporate franchises at the rate of .000¼ on the capital stock for each one per cent. of the dividend declared during the past year. The capital stock of the Insurance Company was $3,000,000, of which $1,940,000 was invested in Government Bonds, and it was claimed that the interest on these bonds could not be included in determining the amount of the tax. This contention was overruled by this Court upon the ground that, *as the bonds were only appraised to determine the value of the franchise,* no tax was imposed upon the bonds themselves. In the course of his opinion Mr. Justice Field says at page 599:

"Reference is only made to its capital stock and dividends for the purpose of determining the amount of the tax to be exacted each year.

* * * * * * * *

"The granting of such right or privilege rests entirely in the discretion of the State, and, of course, when granted, may be accompanied with such conditions as its legislature may judge most befitting to its interests and policy. It may require as a condition of the grant of the franchise, and also of its continued exercise, that the corporation pay a specific sum to the State each year, or month, or a specific portion of its gross receipts, or of the profits of its business, or a sum to be ascertained in any convenient mode which it may prescribe. The validity of the tax can in no way be dependent upon the mode which the State may deem fit to adopt in fixing the amount for any year which it will exact for the franchise. No constitutional objection lies in the way of a legislative body prescribing any mode of measurement to determine the amount it will charge for the privilege it bestows.

* * * * * * * *

From the very nature of the tax, being laid upon a franchise given by the State, and revocable at pleasure, *it cannot be affected in any way by the character of the property in which its capital stock is invested.* The power of the State over the corporate franchise and the conditions upon which it shall be exercised, is as ample and plenary in the one case as in the other."

* * * * * * * *

The Court then cites with approval the case of Monroe Savings Bank *v.* City of Rochester, 37 N. Y., 365, where the Court of Appeals of New York State had laid down this same doctrine, and continues at page 602:

"The doctrine of the taxability of the franchise of a corporation without reference to the character of the property in which its capital stock or deposits are invested is sustained by the judgment in Society for Savings *v.* Coit, 6 Wallace, 594, and Provident Institution v. Massachusetts, 6 Wall., 611."

It is not deemed necessary to make extracts from the cases there cited by Justice Field because they are familiar to this Court. In both cases taxes were imposed upon the franchise of corporations, and, in determining the amount of the tax, it was claimed that it was unconstitutional to appraise that portion of its capital which was invested in United States Government Bonds. This contention was overruled, the Court holding squarely the tax was not imposed upon the bonds but upon the franchise, and that the bonds were simply appraised to determine the value of this franchise or privilege.

Under all of these cases it was conceded, as it is here, that a direct tax cannot be imposed upon Government Bonds, and if such was the result of the acts in question, they were unconstitutional. The only inquiry before the Court was whether the tax was really upon the franchise or upon the bonds, and when the Court reached the conclusion that the tax was imposed upon the franchise, they held squarely the tax was not upon the bonds and there was no constitional objection to appraising them in determining its value. That is all that has been done in the case at bar. The tax is upon the privilege conferred by the State upon Miss Plummer of inheriting these bonds, and they are simply appraised to determine the value of this inheritance. The principle underlying this franchise tax cannot be distinguished from the case at bar.

(*c.*) The same distinction is illustrated by the cases in the United States Supreme Court, upholding a tax upon the value of bank shares. Although the Court had held that the bank could not be taxed upon its capital, when it was invested in Government Bonds, nevertheless it held that a tax could be imposed upon the value of the shares of stock held by individuals in the bank, although all of the capital in the bank, which made up the value of the shares, was invested in Government Bonds, the reason being that the tax was not upon the bonds, and that the bonds were only used in determining the value of the shares.

Van Allen v. *Assessor*, 3 Wallace, 573.
People v. *Commissioner*, 4 Wallace, 244.

IV.

THE CLAIM THAT IT IS IMMATERIAL WHETHER THE ACT IMPOSES A TAX UPON THE BONDS OR UPON THE VALUE OF THE SUCCESSION, BECAUSE IN EITHER CASE IT MIGHT RESULT IN THE GOVERNMENT GETTING A SMALLER PRICE FOR ITS BONDS, AND THUS AMOUNT TO A HINDRANCE OF THE BORROWING POWER OF CONGRESS IS UNTENABLE.

(*a.*) This claim amounts to an assertion that any act of a state legislature, which might in any way affect the price at which the Government might sell its securities, is therefore unconstitutional, because the borrowing power of Congress is thus impeded; or to put the proposition in another way, if the Court might think if the act complained of was repealed, the Government might obtain a higher price for its bonds, then the act must be declared unconstitutional. This claim leads to the most absurd results, and would render unconstitutional, so far as they affected Government Bonds, the execution laws of all States, the provisions in the various States for the sale of decedent's property for the payment of his debts, and almost every law which has been passed by the State regulating the time within which bequests to charitable corporations must be made, and the amount which a decedent, leaving certain relatives, can leave to charitable corporations.

(*b.*) No such test as the uncertain one here suggested, viz., what the Court might think would be the effect of legislation upon the price of Government Bonds, has ever been announced by any Court as the criterion to determine whether the borrowing power of Congress has been affected by State legislation. The test announced in all the cases has always been one turning upon the question of law, whether the effect of the Act complained of was to impose a tax upon the bonds themselves. If the tax is upon the bonds, the Act is unconstitutional; if, on the other hand, the bonds are simply appraised to determine the value of what is taxed, then the Act is not unconstitutional. This test is reasonable and presents a simple question of law,

depending upon the construction of the Act complained of, and not upon inference or surmises as to what may happen in the future. How an act might affect the prices of bonds is uncertain, and whether it would affect it at all very remote. Such a test would make the constitutionality of a law depend, not upon a question of law, but upon the guess of the Court as to what it might think would be the effect of such legislation in the future. It is asserted here by appellants that a decision by this Court that Government Bonds could be appraised in determining the amount of this tax would affect the price, but we venture to predict that a decision of this Court that these bonds can be appraised in fixing this tax will not affect their price in the slightest.

Inheritance laws have existed in this country in some States for over sixty years. The case of *Strode* v. *The Commonwealth of Penn.*, 52 Pa. St., 181, which first held Government Bonds subject to the provisions of the inheritance law, was decided in 1866, and *Wallace* v. *Myers*, 38 Fed. Rep., 184, was decided in 1889. So it has been publicly known from those early periods in the history of transfer laws that Government Bonds were subject to transfer laws. Since that time they have always been included. But nevertheless the rate at which the Government has been able to borrow money has steadily decreased, and the price at which it sold its bonds, as well as the price at which the bonds sell in the general market, have increased since these periods. This is due largely to the increase of wealth and the stability of the investment in the eyes of the public.

The bonds now before the Court were issued under the Funding Act of 1870, and it was well known at that time that the exemption from State taxation in any form did not exempt them from the provisions of the inheritance law, because Strode *v.* Commonwealth had been decided long prior to that time, and therefore the purchasers must have understood that this exemption did not cover inheritance taxes, and therefore there can be no violation of the terms of that contract. It was also well known at the time the Government sold its 2% bonds in 1898 that such bonds would be subject to the State inheritance laws, but nevertheless there was an enormous demand for

said bonds, which shows that the fact that such bonds might be appraised in determining the value of the inheritance did not affect in the slightest the borrowing power of the Government. As previously stated, the increase of wealth in the country and the stability of the investment are the largest factors in determining the price of the bonds, and it is confidently asserted that a decision in this case that they are subject to the inheritance tax laws will not affect the price a fraction of a cent. This is further evidenced by the fact that when this case was decided by the Surrogate, it was publicly announced in all of the newspapers in the City of New York that Government Bonds were subject to the transfer tax laws, but nevertheless it had no effect upon the price at which such bonds were selling in the market. The possibility is too remote to be considered. It is like the attempts which have been made to have it decided that the property of corporations engaged in an intestate commerce or the property of a bridge company over which interstate commerce runs, cannot be taxed by the State as property, because the effect would be to raise the rates which the bridge company or the railroad company would charge for the transportation of property, and thus indirectly amount to a tax on interstate commerce. The Court has held that such a possibility is too remote to be considered.

Henderson Bridge Co. v. *Kentucky*, 166 U. S., 150.
Adams Express Co. v. *Ohio*, 165 U. S., 194.

(*c*.) The same statement that the price of bonds would be reduced and thus the borrowing power of the United States would be affected could with equal and even greater justice be made in the Franchise Tax cases and Bank Share cases previously cited and the argument was in fact made in these cases, because the banks or corporations would not pay as much for the bonds, if they knew their value could be included in determining the value of the franchise or of the stock, or would pay more if they knew they could not be. Nevertheless these cases were all decided upon the legal question whether the act taxed the bonds or whether they were simply appraised to determine the value of the franchise or stock. The price of bonds would be affected by these decisions much more than by any decision in this case.

It is well known that the largest holders of these bonds are the banks, many of which are compelled by law to invest their reserve in such securities, and also the large money corporations, like the Home Insurance Co. and other similar corporations, existing in all of the large cities, which pay franchise taxes. All of these enormous corporations with their immense investments of bonds were affected by these decisions. The amount of bonds which are valued *every year* in fixing the value of the shares of stock in these banks and the franchise tax paid by those corporations is enormous and exceeds greatly the bonds which may be held subject to valuation under Transfer Tax Laws, which exist in a few States and affects only a few people, and a few bonds in comparison. If any acts were to be held unconstitutional because the price of bonds might be reduced or the field of borrowers limited and thus the borrowing power of Congress be affected, surely these acts should have been. Nevertheless, this Court held there was no constitutional objection to valuing the bonds for the purposes of these taxes, and if there was none in these cases certainly there can be none in this case. The facts that after these decisions, which affected *an annual tax*, these large moneyed corporations continue to hold enormous amounts of bonds and to be the largest bidders at all bond sales and that the Government has been able to successfully sell large amounts of bonds at a lower rate of interest than before, show how remote and contingent is the possibility that any decision in this case, holding the bonds can be appraised in the few States having inheritance laws in fixing the tax on successions, will affect in the slightest degree the borrowing power of Congress. The fear suggested that if the power is granted, the rate may be made so excessive as to amount to a burden is too shadowy to require argument, and the possibility is certainly no greater than it was in the Franchise and Bank Share Stock cases.

The supposed case that the Government might be able to sell 2% bonds if the Government could declare an exemption from Transfer Laws seems to rest upon the idea that the United States can override the State laws of descent so as to create a special privilege. This it cannot do. It cannot deal with a subject

reserved to the States such as the regulation of testamentary dispositions of property. Of course if the Government should agree to pay any Transfer Taxes in the States having Transfer Laws the bonds would sell for a higher price in those particular States, but it does not follow from this that the imposition of such taxes have diminished the value of United States bonds in such States since such law applies equally to all kinds of property. It would be just as logical to argue as to the possible effect, if the United States should offer to holders of bonds in States not having Transfer Laws a bonus every time a death occurred. Of course the price would be higher.

The same supposed case could be put with greater force of all the corporations whose bonds are included in fixing their franchise taxes saying we will take the 2% bonds if you will either pay these annual taxes or exempt us from them. Of course then the bonds would bring a higher price, but it that any reason for holding these Franchise taxes unconstitutional or that the Federal Government could grant the exemption.

The appellant puts the supposed case that if the Government should issue proposed new 2% bonds, and they were held subject to State and Federal Inheritance Laws, and the purchaser lived only a few years, he must be out of pocket on his investment. How could this purchaser do any better if he had invested in other securities under the same circumstances? The result would be the same, because the acts affect all property and therefore he could not do better elsewhere.

(*d.*) The claim advanced by appellants leads to most absurd results.

Any State law which may affect the price of bonds is unconstitutional because hindering the borrowing power, is the claim of appellants. Are all the execution laws of all the States unconstitutional so far as they affect United States bonds? It cannot be doubted that people would pay a higher price for United States bonds, if they knew they could not be taken and sold in payment for their debts, and the bonds would become the most desirable form of investments imaginable with this exemption. The logical result of plaintiff's argument that any act, which prevents the Government from getting a higher price

for their bonds, is unconstitutional, would necessarily render all such execution laws unconstitutional so far as they may affect United States bonds because if they did not the bonds would bring a higher price. For the same reasons the provisions of the laws of the various States providing a method for the sale of a decedent's property for the payment of his debts cannot apply to United States bonds, because if they did not, the Government could get a higher price. Therefore, the law is unconstitutional according to appellant's new test. By the law of New York a person leaving certain relatives cannot give more than one-half of his property to charitable corporations and by another can give nothing to such institutions unless the will is made at least two months before his death. Have these laws no application to the portion of the estate invested in United States bonds, because people woud give more for bonds if in that way these statutes could be evaded? They cannot have, if appellant's contention is correct that any act, which may affect the price of the bonds, is unconsitutional.

Any rule which would lead to such absurd results must be wrong.

All the States regulate the investments of corporations created by it as to the amount and character of the securities it may hold, and are regulations as to amount of United States bonds that such corporations can hold interferences with the borrowing power of Congress?

In Monroe Savings Bank *v.* City of Rochester, 34 N. Y., 365, the franchise granted to a Savings Bank was declared personal property and liable to taxation at an amount not exceeding the gross sum of their surplus earned, and the property of the bank was made liable to sale for the taxes. The bank held a large amount of United States bonds. After stating that property invested in United States bonds could not be taxed, the Court says at page 369:

> "It is true, that where a tax is laid upon the property of an individual or a corporation, so much of their property as is vested in United States bonds is to be treated, for the purposes of assessment, as if it did not exist, but this rule can have no application to an assessment upon

a franchise, where a reference to property is made only to ascertain the value of the thing assessed.

"It is, however, argued with great ingenuity and skill that, inasmuch as the plaintiffs, among other powers given them, have the right to invest their money in United States bonds, their franchises and privileges cannot be taxed by the State. The power thus to invest their moneys, it is contended, is a franchise for lending to the United States, and therefore cannot be taxed, because such taxation would trench on the power of the United States to borrow. This is stretching the argument too far. It cannot be pretended that the State would violate any obligation resulting from the power of the United States to borrow money, if the law conferring the power upon the plaintiffs to invest their moneys in United States stocks and bonds were repealed. The State is under no obligation, express or implied, to legislate to enhance the credit of the general government, and should it adopt a system of legislation which indirectly produces such a result, its power of repeal cannot be doubted. The position, that a franchise granted by the bounty of the State is not taxable, because coupled with that franchise is the privilege of loaning money to the general government, is not more untenable than to argue, that, because such a franchise enhances the credit of the United States, therefore the legislature could not repeal the law granting the franchise without violating its constitutional obligations. Suppose the legislature had limited the amount in which the plaintiffs could invest its moneys in the securities of the United States, it will not be contended that such limitation would be void because it impaired the power of the United States to borrow money.

"It must, therefore, be regarded as sound doctrine to hold that the State, in granting a franchise to a corporation may limit the powers to be exercised under it, and annex conditions to its enjoyment, and make it contribute to the revenues of the State. If the grantee accepts the boon it must bear the burden."

(*c.*) Neither is there any force in appellant's position that even if the tax is upon the succession the ability of the Govern-

ment to borrow money at a high premium has been, or may be, affected by the fact that they are subject to a succession tax. Under the authorities previously cited the State has the right to prevent the disposition by will and take all of decedent's property. To take all would not be unconstitutional, and therefore to take part cannot be. But whether the state has the right to take all, which is a position extensively disputed in the appellant's brief, they, nevertheless, concede that the state has the power to regulate testamentary disposition, and the effect of the law in question is a reasonable regulation of that conceded power of regulation, by exacting the payment of a reasonable bonus to itself. The argument of the appellant ignores the fact that a person when he buys the bonds knows that he has a right to enjoy them free from taxation during his life, but has no such inherent right to dispose of them by will, but as Judge Brown says in *United States* v. *Perkins*, 163 U. S., at page

> "Testamentary disposition is purely statutory. * * * * The State has the right to require contribution to the public treasury before the bequest shall take effect. Thus the tax is not upon the property in the ordinary sense of the term but upon the right to dispose of it, and it is not until it has yielded its contribution to the State that it has become the property of the legatee."

It is claimed that because the bonds run to the assigns of the original holder that this would include assignees, who take by virtue of a testamentary disposition, and that therefore the bonds confer the right of testamentary disposition. This does not follow at all. The United States Government does not attempt to declare how a person should become the Assignee of the bond, and it cannot be presumed that they intended, by the use of this word to legislate upon a subject, which was not within its power, and which is a power reserved to the State by the Federal Constitiution, to wit, that of regulating testamentary disposition of all property within its borders. The effect of this clause in the bond is simply that the United States Government agrees to pay the principal and interest on the bond to whomsoever may be the legal owner of the same.

Ownership includes the power of disposition, but this is power of disposition during life. It has never been held as a matter of natural right, that because a man owned a thing, he could dispose of it after his death without regard to the regulations which a State may make as to the testamentary disposition of property. The power to dispose of property by will is not an incident to the ownership of property, except in accordance with such reasonable conditions as the State has a right to impose. The Government agrees to pay the Bond to the Assignee. Conceding that this includes a testamentary assignee, the Government has not attempted to say who is such a testamentary assignee, nor how nor under what restrictions he may become such. That is left to the laws of the State. No one is a testamentary assignee, except one who takes under and in accordance with the conditions and regulations which the State imposes upon the testamentary power of disposition. Suppose the bonds have passed from the testator to his legatee. The owner when he bought the bonds could not acquire from the Federal Government the right to thus transfer them. The State conferred the right, or, under appellant's admission, has regulated it. It granted or regulated the privilege and has the power in granting or regulating it to impose reasonable regulations upon its exercise. Suppose the will was for some informality invalid under the State law, would the Government officials ignore the formalities of the New York Law and pay the bonds to the person named in the will, because the testator intended to assign the bond to this person. Miss Plummer could not become the assignee of the Bond except by a will valid under New York law and in accordance with the other regulations respecting testamentary dispositions made by that State. The exaction of a bonus to itself is a reasonable regulation, and when that bonus is paid and the will is in accordance with the Laws of New York, Miss Plummer becomes the Assignee of the Bond and not before, and then she has a legal right to demand its payment and the Federal Government has agreed to pay it to her as the legal owner. The contract in the Bond has not been violated because under no circumstances does the Federal Government pay more or less than the principal of the bond.

(*f.*) It is impossible in the limited time allowed to go over and reply in detail to the voluminous brief of the appellant in this case. The mere setting out of the terms of the Funding Act of 1870 and of the bonds themselves that they are free from State taxation in any form adds nothing to the broad statement, conceded by the Court in all the cases where the question has been before it, that a direct tax cannot be imposed upon United States Bonds either directly or by subterfuge. Much of the brief is directed to establish the proposition that United States Bonds are not taxable, which is fully conceded by the defendant. The difficulty with the appellant's contention is that much of his brief is not applicable, because the bonds are not taxed, but only the privilege of succession to them. A right which not only this Court, but the Courts of every State before whom the question has ever come, have conceded the State has the power to regulate, if not by taking away entirely, certainly by allowing to a limited extent, as they have done by the act in question.

The question before the Court is simply whether Government Bonds can be appraised in determining the value of an inheritance under a will of a resident of the State of New York, and whether under such circumstances the tax is imposed upon the bonds or not. Whether under the law of New York if the bonds belong to a non-resident, or if a resident had attempted to dispose of them during life to take effect on death, it would be necessary for the Court to hold in these cases it was a tax upon the bonds themselves, and not upon the privilege of succession, have no application or bearing upon the question now before the Court. These bonds do not pass from a non-resident but pass under the will of a resident, and in neither of the two ways suggested, and what the Court might decide in these two cases is immaterial and must be left for a decision when these cases arise.

Any decision which the Court may make regarding the right to exclude the value of Government Bonds under the provisions of the Federal Inheritance Law, and whether that law imposes a tax directly or indirectly on the bonds themselves, which would therefore be unconstitutional, and whether the terms of the bonds exempt them from Federal taxation, can have no bearing upon the decision in this case. It may be possible that the

excise imposed by the Federal Inheritance Law may be construed to be a tax upon the bonds, or "taxes or duties of the United States" within the exemption in the bonds thus created from Federal taxation, without in the slightest affecting the decision of this case. Here the tax is not upon the bonds, but upon the privilege of succession to them, a right created by the State, and which, under all the authorities, and the concession of counsel for the appellant in this case, and the counsel for all the parties including the Solicitor-General in the Federal cases, the State has the power to regulate.

THE CLAIM ADVANCED BY THE APPELLANT GOES TOO FAR.

Granting to the fullest extent that Congress, in the exercise of the power to borrow money, has the right, as claimed by the appellant, to enact such conditions as will aid it in the exercise of that power, in order to provide a market for the bonds, the only condition that Congress has imposed to aid the Government in the exercise of its borrowing power, is that the bonds shall not be taxed. Congress has not attempted to regulate their transmission by will, a subject over which this Court and every other Court, where the question has ever been discussed, say Congress has no control, it being one that rests entirely with the States. The sole question is, therefore, does the Act now before the Court tax the bonds, and the authorities are uniform that it does not, but simply taxes the privilege of succession created and regulated by the State, the bonds being simply appraised to ascertain the value of the succession. This under all the authorities can legally be done by the State.

The appellant in his elaborate brief attacks the reasoning upon which every case, which has ever passed upon inheritance laws, has ever been decided. With the help of supposed cases which cannot arise under the Act in question, and which probably never will arise, they seek to have this Court hold that this Act, which regulates the transmission of the property by will in a manner conceded to be reasonable, is unconstitutional so far as it may apply to Government Bonds. The Act regulates the transmission of all property within the State. All property is treated alike. Government Bonds are placed on the same

footing as all other kinds of property, so far as the reasonable regulations of this law are concerned. This law, passed within the powers of the State, and which must be conceded to be a reasonable regulation of testamentary disposition, should not be set aside upon the bug-bear raised by the appellant, that some future legislature may pass an outrageous law as to the rate of taxation upon this subject, which, as it would necessarily affect all kinds of property, will probably never be passed. When such an outrageous law as the one outlined in the brief of the appellant has been passed and has come before the Court for adjudication, then will be the time to argue whether such a law can be sustained, but the imaginary possibility of such a case should not be allowed to defeat the application of this law, which is not open to the objection of being unreasonable or arbitrary.

(See remarks of appellant's counsels to same effect in their brief at foot of page 85 and page 86.)

Finally.

THE JUDGMENT AND DECREE BELOW SHOULD BE AFFIRMED AND THE CASE REMANDED WITH THE USUAL INSTRUCTIONS TO THE COURT BELOW.

JABISH HOLMES, JR.,
EDGAR J. LEVEY,
Of Counsel.

No. 1489

FEB 26 1900

JAMES H. MCKENNEY,
Clerk.

Supreme Court of the United States.

OCTOBER TERM, 1899.

HARRY FLEISCHMANN, as Executor of the Last Will and Testament of JOSEPH FLEISCHMANN, Deceased,

Plaintiff in Error,

vs.

BIRD S. COLER, Comptroller of the City of New York,

Defendant in Error.

In Error to the Surrogate's Court of the County of New York, in the State of New York.

Appendix to Brief for Defendant in Error, Containing Opinions that United States Bonds can be Appraised in Determining the Value of Successions.

JAMES HOLMES, Jr.,
EDGAR J. LEVEY,
Of Counsel.

LIBERATOR PUBLISHING CO., 49 BEEKMAN ST., N. Y.

EXTRACT FROM CASES WHERE UNITED STATES BONDS HAVE BEEN APPRAISED TO DETERMINE THE VALUE OF THE PRIVILEGE OF SUCCESSION.

Matter of Sherman, 153 N. Y., 1.

1. *Inheritance and Transfer Tax Laws. United States Bonds.—The inclusion of United States bonds in the valuation under laws for the taxation of the right of transfer of property by inheritance or by will, for the purpose of ascertaining the tax, is a valid exercise of legislative power by a State, and does not constitute a taxation of Federal securities.*

2. Transfer Tax Act of 1892. Exemption of United States Bonds.—United States bonds, owned by a resident decedent, which would otherwise be subject to valuation for the purpose of fixing the tax under the Transfer Tax Act of 1892 (Ch. 399), are exempt from such valuation, by force of the provision (§22) which limits the meaning of the words "estate" and "property," as used in that act, to property over which the State has jurisdiction for the purposes of taxation.

ANDREWS, Ch. J. This appeal is from an order which affirmed the decision of the Surrogate, which excluded from appraisal under the Act, chapter 399 of the Laws of 1892, in relation to the taxable transfers of property, United States bonds amounting to $10,000, owned by the testator, a resident of the State, who died in 1896. The question presented depends upon the provisions of the Act of 1892. The power of a State to tax the right of transfer of property by will or the right of succession under the intestate laws of the State is not an open question. It results from the acknowledged principle that the right to dispose of property by will and of succession thereto in cases of intestacy is derived from and under the municipal law. The State which confers the right and prescribes the rule of descent or distribution, may, therefore, annex to the privilege which it confers such reasonable conditions to its employment as it may deem expedient. There is no doubt that the laws for the taxing of inheritances or of the

right of transfer by will are within the general scope of legislative power. The special question here is whether the Act of 1892 exempts from valuation for the purpose of fixing the tax imposed by the Act that part of the estate of the testator represented by United States bonds. The form of the question above stated assumes that the bonds would be the proper subject of valuation unless excluded by the true construction of the act. If the tax imposed by the law of 1892 is a property tax in the ordinary sense, levied upon the property of a testator or an intestate, it could not be sustained as a lawful exercise by the State of the power of taxation, so far as it affected securities of the Federal government. The principle that a State cannot, in the exercise of the power of taxation, tax obligations of the United States, was established at an early day. But the tendency both of the Federal and State courts has been in the direction of limiting the operation of this immunity and to uphold State statutes imposing taxation, which, although operating indirectly upon property in government securities, were enacted for another purpose, and where the indirect taxation was merely an incident to the exercise by the State of an acknowledged power of government. Laws taxing franchises of corporations and providing for taxation, measured by the value of the corporate property, including Federal securities, or by income derived in part from investments therein, have been sustained, and illustrate the tendency to which we have referred. (Society for Savings *v.* Coite, 6 Wall., 594; Provident Institution *v.* Massachusetts, Id., 631; People *v.* Home Ins. Co., 92 N. Y., 328 Id., 119 U. S., 129).

This Court has not been called upon to consider the question of the power of the State to prescribe that in ascertaining the value of the property of a decedent for the purpose of fixing the tax, under the Collateral Inheritance or Transfer Tax Laws, the value of Federal securities owned by the decedent shall be included. But we apprehend that the existence of the power cannot be denied upon reason or authority. The tax imposed is not, in a proper sense, a tax upon the property passing by will, or under the Statutes of Descents or Distribu-

tions. It is a tax upon the right of transfer by will, or under the intestate law of the State. Whether these laws are regarded as a limitation on the right of a testator to dispose of property by will, or upon the right of devisees to take under a will, or the right of heirs or next of kin to succeed to the property of an intestate, is not material. The so-called tax is an exaction made by the State in the regulation of the right of devolution of property of decedents, which is created by law, and which the law may restrain or regulate. Whatever the form of the property, the right to succeed to it is created by law, and if the property consists of Government securities, the transferee derives his right to take them as he does his right to take any other property of the decedent, under the laws of the State, and the State by these statutes makes the right subject to the burden imposed. The question was answered by the Supreme Court of Pennsylvania in Strode *v.* Commonwealth (52 Pa. St., 183) and by Judge Wallace, of the Circuit Court of the United States, in Wallace *v.* Myers (38 Fed. Rep., 184), and in both cases it was held that the inclusion of United States bonds in the valuation under the laws for the taxation of inheritances, for the purpose of ascertaining the tax, was a valid exercise of the legislative power of a State, and did not constitute a taxation of Federal securities. We concur in the conclusions reached in these cases, which are amply supported by the authorities and reasoning upon which they proceed.

We return, therefore, to the question originally stated, whether the act of 1892 exempts United States bonds from valuation in fixing the tax. Unless such exemption is found the bonds in this case should have been included in the valuation. The case of Wallace *v.* Myers (*supra*) was brought in the United States Court, and was governed by the Act of 1887 (Chap. 713). By the first section of that Act the tax was imposed upon "all property" passing by will or by the intestate laws of the State. There was no limitation of this language in the subsequent sections of the Act, and it was held, as we think properly, that United States bonds were to be valued in fixing the tax. The Act of 1892 contains a new provision, not

found in the prior Acts. The 22d section declares that the words "estate" and "property," as used in the Act "shall include all property or interest therein, whether situated within or without this State, over which this State has any jurisdiction for the purposes of taxation." We had occasion in the Matter of Whiting (150 N. Y., 27), to consider the application of this clause of section 22 of the Act of 1892 to a case of United States bonds owned by a non-resident decedent on deposit at the time of his death with other securities in the vaults of a safe deposit company in the City of New York. The objection was taken that they could not be included in the valuation under the Act of 1892, and this Court sustained the objection on the ground that the bonds, being property not subject to the taxing power of the State, were exempt from valuation under the definition of property in section 22. It was probably the primary purpose of this definition to exclude any inference from the generality of the words used in the first section of the Act, that the valuation to be made should include the real property of resident decedents situated outside of the State. (See In re Swift, 137 N. Y., 77.) But the language extends to all property not within the taxing power of the State, and Federal securities are plainly within the definition. It is the jurisdiction of the State to subject property to taxation under its general taxing power, and not whether the jurisdiction has been exercised, which is the test of exemption under section 22 of the Act of 1892. Property of every description passing by will or under the Statutes of Descents or Distributions, which is subject to the taxing power of the State, is to be valued under the Act, irrespective of the fact whether it has or has not been subjected to taxation under existing laws. (Matter of Knoedler, 140 N. Y., 377.) But we are of opinion that the United States bonds were properly excluded from the valuation of the decedent's estate by the Surrogate by force of section 22 of the Act of 1892. (Judges Gray, O,Brien, Bartlett, Haight, Martin and Vann concur.)

In *Wallace* v. *Myers*, 38 Fed. Rep., 184, it was held:

"*Where the property of the decedent includes United States*

bonds, the tax may be assessed upon the basis of their value. The tax is not imposed upon the bonds, but is merely a tax upon the privilege of acquiring property by inheritance."

Judge Wallace says at p. 185:

"This question is fairly a debatable one, but seems to be satisfactorily answered by the consideration that the tax is not imposed upon the bonds, but is one upon the privilege of acquiring property by inheritance. The circumstance that incidentally under such a statute such bonds may have to be valued in order to ascertain the amount of the tax does not affect its essential nature as one upon the privilege, and not upon the bonds. The statute exacts compensation in the form of a tax, and measures the price according to the value of the inheritance; and the only purpose and effect of valuing the bonds when they form a part of a decedent's estate is to ascertain and measure the value of the privilege. * * *

"The bonds are the subject of the appraisal, but the privilege is the subject of the tax. Inasmuch as it is lawful for the State to withhold altogether the privilege of acquiring property within its domain by will or inheritance, whether the property consists of government bonds or anything else, it is lawful for the legislature to annex any conditions to the privilege which may seem expedient and do not conflict with the organic law of the state, or the constitution or laws of the United States. In the language of the Court in Mager *v.* Grima, where a similar statute was under consideration:

"'The law in question is nothing more than the exercise of the power which every state and sovereignty possessed, of regulating the manner and terms upon which property real or personal within its dominion may be transmitted by last will and testament, or by inheritance, and of prescribing who shall and who shall not be capable of taking it.'

"The terms of the Act of Congress of June 30, 1864 (13 U. S. Stat., 285), taxing legacies and successions are quite similar to those of the present statute in respect to the valuation for assessment. The subject-matter of the assessment under that Act was held by the Supreme Court in Scholey *v.* Rew, 23 Wall., 331, to be the devolution of the estate, or the right to become beneficially entitled to it; and the act was considered as taxing a privilege, and not the property. In Virginia the highest court of the State has construed a similar statute as imposing the tax,

not upon the property, but upon the privilege of acquiring it by will or under the intestate laws. Eyre *v.* Jacob, 14 Grat., 422; Miller *v.* Com., 27 Grat., 110. The precise question now presented was considered by the Supreme Court of Pennsylvania in Strode *v.* Com., 52 Pa. St., 181, and the Court treated the statute, not as taxing property, but as a regulation of the transmission of the property of decedents; and upon that view held that government securities were properly included in the valuation of the inheritance upon which the tax was assessed. If such statutes are to be regarded as taxing a privilege, and not property, then the cases of Society *v.* Coite, 6 Wall., 594, and Institution *v.* Massachusetts, Id., 631, furnish by analogy the rule which should be applied in the present case. In the latter case the Court used the following language:

"'Granting that it is not a property tax, then it must be considered as a franchise tax laid upon the corporation for the privileges conferred by the charter, which, by all the authorities, it is competent for the state to tax, irrespective of what disposition the institution has made of the funds, or in what manner they may have been invested.'

"Accordingly the Court held in those cases that, although by the statute imposing the tax the amount was to be ascertained by the amount of the deposits of the corporation, the circumstance that those deposits were invested in government securities was not material. The case of People *v.* Insurance Co., 92 N. Y., 328, affirmed by the Supreme Court in Insurance Co. *v.* New York, 119 U. S., 129, 8 Sup. Ct. Rep., 1385, is also instructive. There a statute of New York imposed the tax upon the franchises of corporations within the State, to be assessed upon the amount of the dividends upon the capital stock. The Court held that in ascertaining the basis for computing the amount of the tax, the portion of the dividends derived from the investment of the corporation in United States securities was not to be deducted. No opinion was promulgated by the Supreme Court in deciding this case. It is to be observed, however, that it was not even contended for the corporation in that court that the tax was to any extent void or excessive if it was a franchise tax, but the contention was that it was in effect a tax upon the property of the corporation, and therefore void, so far as it was based upon property in the form of United States securities. In any view, the Court must have held that if it was a franchise tax the valuation of United States securities as a basis of assessment was permissible. The authorities thus referred to should control the de-

cision of the present case, in the absence of any decision directly in point by the Supreme Court."

In *Strode* v. *Commonwealth*, 52 Pa. St., 181, where United States bonds were appraised, BUTLER, P. J., says at p. 182:

"In McCulloch *v.* Maryland, 4 Wheat., 316, the Supreme Court of the United States declared that the several States' have no power by taxation or otherwise, to retard, impede, burthen or in any way control the operation of the constitutional laws enacted by Congress to carry into execution the powers vested in the general government.' And this principle is affirmed by the cases of Weston *v.* The City of Charleston, 2 Peters, 449; Osborne *v.* The Bank of the United States, 9 Wheat., 738; Dobbin *v.* The Commissioners of Erie County, 16 Peters, 435; Bank of Commerce *v.* The Commissioners, 2 Black, 620; and the Bank Tax cases in 2 Wallace, 200. And it was, therefore, decided that the States cannot impose taxes on the banks formerly established under the laws of the general government, nor on the offices held by the government's agents. It would seem to be clear, therefore, independently of the prohibition contained in the statutes authorizing the recent loans, that the States cannot tax the bonds issued by the general government. In the case before us it is urged that what is claimed by the plaintiff is not a tax. But if this were determined to be so, it would not seem to advance us in the inquiry which the case presents. If not a 'tax' it is certainly a *burthen*, and if imposed on bonds of the United States, or on the owner of such bonds, in respect to them, it would be obnoxious to the objection which the defendant makes. But is it imposed on the bonds or on an owner of them? What is called a collateral inheritance tax, is a bonus, exacted from the collateral kindred and others, as the condition on which they may be admitted to take the estate left by a deceased relative or testator. The estate does not belong to them, except as a right to it is conferred by the State. Independently of government no such right could exist. The death of the owner of property would necessarily terminate his control over it, and it would pass to the first who might obtain possession. The right of the owner to transfer it to another after death, or of kindred to succeed, is the result of municipal regulation, and must, consequently, be enjoyed subject to such conditions as the State sees fit to impose. See Black. Com., 2d book, pp. 10, 11, 12, 13. And we see the State continually imposing new conditions; some-

times enlarging, at others restraining, the privilege, and sometimes again entirely taking it away, by changing the parties who are to succeed. In Pennsylvania up to 1833 we followed the rule of the common law in ascertaining the 'next of kin.' Since that time we have pursued the rule of the civil law, which by employing a different mode of computation frequently confers the estate on an entirely different class of kindred. Up to 1855, if an intestate left brothers and sisters entitled to inherit, and also the grandchildren of a deceased brother or sister (their immediate parents also being dead), the brothers and sisters took the entire estate. Since that time they are required to share it with the grandchildren. Up to the same period when nephews and nieces, the children of several brothers and sisters, alone were entitled to inherit, they shared the estate equally. Since that time they take *per stirpes*, so that if there be six, one of them representing one deceased brother, and the other five another, this one now takes as much as the other five. These instances are sufficient for illustration; they might be almost indefinitely multiplied. They show how instantly the State asserts its right to control the disposition of decedents' estates. And it does so whether there be a will or not. If the decedent leaves a wife, the State gives her more than one-third of his personalty and a share of his realty, though he may have willed otherwise. Blackstone in speaking of this subject says: 'Nothing varies more than the right of inheritance and testament, under the different national establishments. In England particularly is this diversity carried to such a length as if it had been meant to point out the power of the law in regulating the succession to property, and how futile every claim must be that has not its foundation in the positive rules of the State. For instance, in personalty the father may succeed to his children; in landed property he never can be their heir by the remotest possibility. In general only the eldest son, in some places only the youngest, in others all the sons together, have a right to succeed to the inheritance. In realty males are preferred to females, and the eldest male will usually exclude the rest, while in the disposition of the personalty females are admitted with the males, and no right of primogeniture is allowed.'

"I repeat, therefore, as the right to take by succession and testament is derived from the State, it must necessarily be enjoyed subject to such conditions as the State may impose. And if a condition be that the kindred or legatees shall pay a bonus, this is not a tax or burthen imposed on *their property*, or on the prop-

erty of anybody else. It is simply the price of the privilege which the State has conferred upon them. If they do not choose to avail themselves of the privilege they need not pay the price, and are no worse off than before."

In *Clymer* v. *The Commonwealth*, 52 Pa. St., at p. 186, CHAPMAN, P. J., says:

"But the view entertained by the Court is, that no Act of Congress impinges upon the collateral inheritance law. This law contemplates the imposition of no tax such as Congress intended to prohibit. It is called a tax or duty, but has little, if any, analogy to a tax in the usual acceptance of the term. It cannot be regarded as a penalty exactly, but it approximates that as nearly as it does an ordinary tax. It is assessed but once. The claim is made as against a particular class of persons. It is the relation of the person, who claims the estate, to the decedent which constitutes the ground upon which the abatement is authorized. This is the condition upon which the collateral beneficiary is entitled to receive a decedent's estate. The legislature have a constitutional right to prescribe the mode of descent of intestates' estates, and as the right to make a will is by legislative authority, what is to prevent the legislature from declaring prospectively, that legitimate and illegitimate children shall take in equal shares, even against the attempt of the parent to the contrary by will? Now, this is not to be viewed as a tax assessed upon the estate of the decedent or of anyone, but a restriction upon the right of acquisition by those who under the law regulating the transmission of property are entitled to take as beneficiaries without consideration. The State is made one of the beneficiaries. It lays its hands upon estates under such circumstances, and claims a share, and whether the share is exacted as a tax or duty or whatsoever else, or the machinery employed in levying an ordinary tax is adopted or not, is of no consequence. The constitutional authority of the State cannot be denied; Short's Estate, 4 Harris, 63. The act of the legislature is not liable to the imputation that it countenances the appropriation of private property for public use without consideration, for the estate never vests without the charge. If the position of the defendant were correct, supposing a decedent's estate consisted wholly of United States securities, no abatement could be made on account of fees of officers, &c., for this description of property

would be beyond the reach of State legislation, and the executors would have to pay out of their own pockets, whatever is prescribed by the fee bill or tax law. On the supposition that the estate consisted wholly of interest-bearing notes, which would come within the term 'other securities' as used in the proviso to the Act of February 25th, 1862, and recognized as money, it can hardly be supposed the claim of exemption would be asserted, and as the case stands no difference is perceived."

In *Strode* and *Clymer* v. *Comm.*, 52 Pa. St., on appeal, WOODWARD, C. J., says, at page 188:

"The simple question is, whether our collateral inheritance tax is applicable to that part of the decedent's estate which consisted of bonds of the United States that were by law exempted from State taxation. And the opinion of the learned Judge below is so satisfactory as to leave very little for us to add. The mistake of the learned counsel for the plaintiff in error consists, we conceive, in treating this as a tax of the government bonds, when it is really a tax upon a decedent's estate, dying without lineal heirs. And it does not help the argument, that the bulk of the estate is made up of these bonds.

* * * * * * * * *

"Therefore, neither the prohibitory clause of the Act of Congress of 1862, nor any of the principles of decision against State authority to tax that which the Federal authority has exempted from taxation, have any application here. The Federal Government has not prohibited the States from prescribing rules of inheritance and succession to estates of decedents, and it would be a grievous mistake of legislative and judicial authority to apply it with such effect."

In *Matter of Howard*, 5 Demarest, 483, Surrogate ROLLINS held that the tax imposed by the Act of 1885 was not upon property, but upon the passing thereof, and the fact that a portion consisted of government bonds was immaterial.

ROLLINS, S., says, in his exhaustive opinion at page 489:

"If the tax in dispute is in a strict sense a tax upon property, it may be claimed, with much force, that a decedent's estate, so

far as it consists of United States bonds, is wholly exempt from taxation. If, on the other hand, the tax is imposed upon the 'passing' of such decedent's property, the question whether the property consists in whole or in part of United States bonds is wholly immaterial.

"The doctrine asserted by Sir William Blackstone in Chapter 1, Book 2 of his Commentaries, has been repeatedly asserted by the courts in this country. 'The universal law of almost every nation,' he says, 'has given a dying person a power of continuing his property by disposing of his possessions by will; or, in case he neglects to dispose of it or is not permitted to make any disposition of it at all, the municipal law of the country steps in and declares who shall be the successor, representative or heir of the deceased * * * and in case no testament be permitted by the law, or none be made, and no heir can be found so qualified as the law requires * * * the doctrine of escheats is adopted in almost every country, whereby the sovereign of the State, and those who claim under his authority, are the ultimate heirs and succeed to those inheritances to which no other title can be founded. * * * Wills, therefore, and testaments, rights of inheritance and successions are all of them creatures of the civil or municipal law, and accordingly are in all respects regulated by them.'"

"The sovereign power of this State may, if it chooses, abrogate the existing statutes of wills and of distribution, and, as regards personal property that may be possessed at his death by any person residing within its limits, may direct that the same shall become exclusively the property of the State. If it can thus exert absolute authority in the premises it may of course wield such limited authority as it may see fit to exercise. It may appropriate to itself a prescribed portion of the decedent's possessions and permit his kindred or the objects of his testamentary bounty to enjoy the rest.

"The legislature of New York had power, therefore, to declare, at the time of the enactment of the law here in question, that henceforth the personal estate of a resident decedent, in excess of the sum necessary for discharging his debts, should not all of it pass, and as it would theretofore have passed, to his legatees or his next of kin; that only ninety-five per centum thereof should so pass, and that the remaining five per centum should escheat to the State. This authority was in no manner dependent upon the character of the decedent's property. Even if it should consist exclusively of United States bonds, the State

had power to direct that five per centum of the whole amount of such bonds should flow into its treasury."

EXTRACTS FROM THE OPINIONS IN THE OTHER CASES WHERE UNITED STATES BONDS HAVE BEEN APPRAISED HAVE NOT BEEN PRINTED AS THEY ARE SIMILAR TO THE ABOVE.